Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act of	)	CC Docket No. 96-98
1996	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Intercarrier Compensation for ISP-Bound	)	CC Docket No. 99-68
Traffic	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

REPLY COMMENTS OF ADHOC TELECOMMUNICATIONS USERS COMMITTEE

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Summary

The Commission should reform the methodology used to calculate the Universal Service Fund (USF) contribution obligations of telecommunications providers. Commenters overwhelmingly support basing USF contributions on assessable telephone numbers. The arguments for the change are incontrovertible, and can be boiled down to the proposition that USF funding will not be stable and predictable under a revenue-based USF contribution assessment scheme.

Opponents of a numbers-based assessment methodology argue that an occasional dip in the revenue-based USF surcharge means that change is not necessary or that a particular type of business user would be adversely affected. An occasional dip does not, however, change the fact that when the data points are smoothed out the surcharge slope is ever upward. Nor is an impact on particular types of business a reason to retain a revenue-based assessment. First, the impact of a change will vary among business users. Second, affordability is a different concept than adverse economic impact. A change in USF contribution assessment methodology may produce an adverse economic impact for a small subset of users but be unaffordable. Third, the Commission should prescribe an assessment methodology that best serves all of the applicable mandates in the Communications Act. In this case, an undefined level of impact on a not well specified subclass hardly outweighs the stability and predictability that would come from moving to a telephone numbers – based USF contribution methodology, particularly when the USF burden borne by residential users as a class and by the average residential user will lighten under a numbers-based scheme.

If the Commission concludes that it must include capacity-based USF charges to account for carriers who do not provide services with which there are associated telephone numbers, the Commission should adopt the capacity tiers recommended by AT&T and apply capacity–based surcharges only on dedicated connections with which there are not associated telephone numbers. The Commission should not impose both a numbers-based assessment and capacity-based assessment on any connection.

As for reforming intercarrier compensation mechanisms, none of the parties who support Appendices A and/or C justify the revenue neutrality feature of both Appendices. The resulting Subscriber Line Charges would have no relationship to underlying costs, and be without regard to whether those rates would be lawful under section 201 of the Act. Embedding revenue neutrality in intercarrier compensation reform would constitute unreasonable decision-making, particularly if the Commission were not to account for the cost savings that major carriers would achieve through intercarrier compensation reform.

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Reply Comments

The AdHoc Telecommunications Users Committee hereby replies to certain comments filed in the above-captioned proceedings on November 26, 2008.

I. Strong Opposition To Assessing USF Contributions Based On Revenues.

Comments of other parties evidence strong opposition to continued assessment of Universal Service Fund (USF) contributions based on revenues from interstate and international telecommunications. Parties recognize, as Verizon puts it, that the current USF assessment mechanism is broken.[1] Interstate telecommunications revenues are declining and are becoming harder to quantify given the increasing integration of interstate, intrastate and non-telecommunications services and products in service bundles. As a result, the funding mechanism for the USF is becoming less stable.

A. Those Who Argue For Retention Of Revenue-Based USF Assessments Fail To Provide Persuasive Arguments Or Evidence.

The National Association of State Utility Consumer Advocates (NASUCA) disagrees with the conclusion that the revenue-based assessment methodology is broken.[2] Indeed, NASUCA argues that, all things being equal, the USF factor for the first quarter of 2009 will be at its lowest point in years.

The interstate USF assessment factor has climbed steadily since its inception. Of course, there have been quarters in which the USF factor has dipped. Whenever these dips occur, proponents of retaining the current revenue-based USF contribution

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[1] *See, e.g.*, Verizon, comments at 34-35; United States Telecom Assn., comments at 11, Windstream, comments at 60-61.

[2] NASUCA, comments at 39 – 40.

assessment scheme argue that there is no cause for concern. When the data points, however, are smoothed out, the slope moves steadily up the vertical axis. As a consequence, the incentive has been increasing to utilize service arrangements and packages to minimize the USF assessment. This incentive is natural and unavoidable, and is facilitated by the coalescing of telecommunications and non-telecommunications services. The trend is so clear that NASUCA's position is hard to understand.

NASUCA's position is even harder to understand in light of the fact that AT&T, Verizon and AdHoc have shown that business users will shoulder a larger share, and residential subscribers a smaller share, of the USF burden under a numbers-based USF assessment regime.[3] Moreover, AT&T and Verizon have shown that the majority of consumers would pay less in USF monthly fees under a numbers-based scheme.[4] Given the favorable impact on consumers from moving to a numbers-based USF assessment methodology, the value of stabilizing the source of USF funding, and the increasing instability of the current funding mechanism, the Commission must reject NASUCA's plea to retain the current revenues-based assessment regime.

tw Telecom, One Communications and Cbeyond ("Joint Commenters") urge the Commission to retain revenue-based USF assessments for service provided to business customers. The Joint Commenters favor retention of revenue-based assessments because "some business" subscribers would pay higher USF surcharges

[3] AdHoc, Comments at 18-19, and Table 4 thereto; AT&T and Verizon, *Ex Parte* submission in WC Docket 06-122, CC Docket No. 96-45, Table 2, September 23, 2008.
[4] AT&T and Verizon, *Ex Parte* submission in WC Docket No. 06-122, CC Docket No. 96-45, Table 4, September 23, 2008.

under numbers or connections-based assessments.[5] Joint Commenters support the Appendix A and C approach while urging more study.

Joint Commenters, however, offer no evidence to support retention of revenue-based USF assessments. They provide no data on relative impacts of the various assessment methodologies, nor do they provide any data on how many universities and hospitals might be "for profit;" whether the "for profits" would be treated differently than "not for profits" and whether affordability should be considered. It also is not at all clear that each type of entity mentioned by the Joint Commenters (universities, hospitals, charitable organizations, and governmental bodies) would be affected similarly by numbers-based assessments. The impact would vary among types of businesses, and within types of business, depending on the dollar value of interstate telecom billings versus the quantity of numbers subject to the assessment.

The Commission's goal should be to adopt the USF assessment mechanism that provides the most economically efficient, stable and predictable source of funding for the USF and that results in just and reasonable assessments. The Joint Commenters, as well as Appendices A and C, would expose USF funding to even greater instability and uncertainty because a larger share of the USF subsidy burden would be borne by business subscribers. NASUCA acknowledges that most of the issues allegedly (NASUCA's characterization) threatening revenue-based USF funding are "[m]ore, not less prevalent on the business side than for residential service."[6] The need for reform is too great and the stakes are too high for the Commission to continue to assess USF contributions associated with business customers on the basis revenues.

5 Joint Commenters, comments at 10.
6 NASUCA, comments at 44.

The balance of section I of these reply comments addresses recommendations of other parties regarding the USF contribution assessment methodology that should replace the existing revenue-based regime.

B. If Not Revenues, What?

In addition to AdHoc, other parties urge the Commission to move to a numbers-based assessment scheme.[7] Several of these parties explain that distinguishing between business and residential numbers, as Appendices A and C propose, is not workable in many cases.[8] Indeed, AT&T characterizes the distinction as arbitrary and increasingly obsolete.[9] Appendix B does not suffer from this arbitrary distinction. Appendix B would assess all "assessable numbers," *i.e.*, residential and business numbers, not just residential numbers.

Other parties also argue that the time has come to transition to a new USF contribution assessment methodology for services provided to business and residential customers. Even if the Commission concludes that section 254(d) of the Communications Act compels a hybrid assessment methodology to assure that all providers of telecommunications services contribute to the USF, parties urge the Commission to implement in one step a system that would use numbers and connections.[10]

No more time is needed to study the connections-based component of a hybrid assessment system. The capacity tiers proposed in Appendix B would fundamentally change the economics of many networks and applications, and would be anything but

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7 *See, e.g.,* AT&T, comments at 46; High Tech Associations Coalition, comments at 17; USTA, comments at 11; Verizon, comments at 38.

8 *See, e.g.*, AT&T, comments at 51; High Tech Associations Coalition, comments at 16.

9 AT&T, comments at 50.

10 AT&T, comments, n. 73; Qwest, comments at 41; Verizon, comments at 39-41.

economically efficient. Accordingly, AdHoc and AT&T have proposed alternative capacity tiers. AdHoc hereby supports Commission adoption of the capacity tiers proposed in AT&T's November 26, 2008 comments in the above-captioned proceedings if the Commission erroneously concludes that the USF contribution assessment methodology must include a connections component, even for carriers that would contribute to the USF based on "assessable numbers." In no instance, however, should the same connection be subject to numbers-based and connections-based USF assessments.

II. Intercarrier Compensation Reform

A. The elephant in the room with intercarrier compensation reform – revenue neutrality even for those presently abusing the system.

Arguing for the FCC to implement immediate changes to the intercarrier compensation rules that would end "traffic pumping" and "phantom traffic" opportunities, AT&T, talks about "unscrupulous LECs with grossly inflated access charges" causing "ordinary consumers" to "churn out windfall profits" for them.[11] Yet at the same time AT&T supports implementation of Appendix C of the NPRM[12] -- a plan that would allow these very same rural ILECs to recover the revenue streams associated with the traffic pumping schemes that exist today from the very same consumers via increased SLCs and universal service assessments. AT&T, it appears, is most concerned with insulating itself from having to bear any of the costs associated with traffic pumping and phantom traffic, and not concerned with shifting recovery of their revenues to end-users.

[11] AT&T, comments at 6
[12] AT&T, comments at 2.

As AdHoc stated in its initial comments, the revenue neutrality inherent in the proposed reformation plans is not innocuous. "Instead, revenue neutrality protects carrier interests without any quantitative analysis demonstrating that the resulting rates would satisfy the just and reasonable standard embedded in section 201 of the Communications Act."[13] The Commission cannot allow the "massive wealth transfer from ordinary Americans to these arbitrageurs"[14] described by AT&T to be incorporated into either SLC increases or a universal service funding requirement. These "schemes" by "unscrupulous LECs" represent obvious and egregious examples of the problems engendered by presuming that existing revenue streams need to be preserved. Absent a cost-based analysis of the actual revenue streams necessary to preserve universal service, the "massive wealth transfer" identified by AT&T, is likely to be just the tip of the iceberg.

B. Those supporting SLC increases have failed to provide any quantitative or legal justification for their positions.

The Comments of those parties that would be "made whole" under the ICC-reform proposals contained in Appendices A and C of the NPRM either explicitly support that approach,[15] or take the proposed SLC increases so much for granted that they are not even a part of their Comments.[16] AdHoc has indicated in its earlier Comments that increasing SLC rates to allow recovery of lost switched access revenues (rebalancing rates) would only be appropriate if existing SLC rates were set at

[13] AdHoc, comments at 2
[14] AT&T, comments at 32.
[15] AT&T, comments at 18 – 21 and 39 - 41, Qwest, comments at 5 - 10, NTCA, comments at 3, 11 and 37 (NTCA's supports SLC increases up to a Federal Benchmark level, and then advocates other make-whole mechanisms for the remainder of any lost revenues) and USTA, comments at 7. Embarq does not support SLC increases, but does support being made whole via other methods (Embarq, comments at 53).
[16] *See, e.g.* Comments of Verizon,.

levels that did not fully recover the interstate portion of the subscriber loop plant. At the time the NPRM was released there was no evidence in the record that the present subscriber line charges were not set at fully compensatory levels – the initial Comment round did nothing to change that situation.[17]

No parties have provided any evidence that subscriber-lines are being implicitly supported by existing switched access prices (interstate or intrastate).[18] None of the affected ILEC parties have quantified or even estimated their potential "lost revenues" or shown that the reductions in revenue stream that would flow from the proposed reductions in switched access charges would interfere with their ability to earn a reasonable return on their investments.

C. Claims of lost ILEC revenues under the proposed reform plans must be adjusted to account for cost savings flowing from comprehensive reform.

Analyses of the impact of the proposed reform of the complex web of intercarrier compensation rate levels by commentors in this proceeding for the most part ignore the cost savings that the vast majority, if not all, ILECs will enjoy if lower and more uniform pricing for carrier to carrier transport is implemented. Central to all of the arguments supporting a uniform intercarrier compensation rate is the premise that the existing system encourages arbitrage resulting in increased administrative and out-of-pocket costs to the ILECs. Once implemented, a reduced terminating rate will not only result in

[17] Several parties (NASUCA, comments at 18; Free Press, comments at 10-12 for example) documented that SLCs are already priced at or above the interstate costs.

[18] AT&T, comments at 2 claims that "implicit support" is still embedded in switched access charges, but includes no support for its statement.

lower access and reciprocal compensation charges being paid by competitors to the ILECs for call termination services (the ‘lost revenue’), but also lower charges being paid by those same ILEC’s to their competitors for termination on the competitors networks (a reduction in the ILECs out of pocket costs). Attempts to ameliorate the impacts of the proposed reforms on the revenues of the ILECs without accounting for the contemporaneous impact on their costs would be unreasonable decision making and would almost certainly result in rates that are unjust and unreasonable.

The California PUC, one of the few parties to actually come forward with any quantitative data whatsoever in this proceeding, has estimated a loss of $60-million in intrastate revenues during Stage 1 of the proposal and up to $170-million (total revenues) by the end of Stage 3 within the State of California.[19] Those potentially reduced revenues represent only one side of the equation – and must be offset by cost savings that the California ILECs would achieve as a result of lower termination charges paid to the ILECs competitors and the elimination of “traffic pumping” schemes, elimination of “phantom traffic” and the myriad other problems that have been identified by the ILECs in this proceeding.[20]

D. ILEC Proposals that would allow greater flexibility relative to the proposed SLC increases are not warranted.

Both Qwest and Verizon propose that the language in the Appendices A and C be modified to give them greater flexibility as to how they increase Subscriber Line

[19] California PUC, comments at 14.

20 AdHoc agrees with those parties that have advocated accounting for reductions in access charge and reciprocal compensation payments made by long distance and wireless affiliates (integrated or not) of the ILECs as well. Free Press, comments at 46. California PUC, comments at 15 -16, Mass DTC, comments at 4 – 5.

Charges to recoup revenues streams that may be reduced. Qwest proposes that the Commission "eliminate the language in the ICC Proposal imposing two conditions on the availability of initial SLC increases" [footnote omitted][21] AT&T requests that the FCC modify its proposed rules to ameliorate difficulties it foresees in implementing the SLC increases in a uniform manner within individual jurisdictions.[22] AdHoc agrees with AT&T and Qwest that the proposed rules regarding the implementation of the proposed increases to SLC caps are poorly designed and poorly documented, but disagrees with the conclusion that the solution to the problem is to grant the ILECs flexibility as to how to increase SLCs above cost. Instead AdHoc urges the Commission to eliminate the automatic revenue-neutrality component of its proposals, including the increases to the SLC caps, and the changes to the manner in which those caps function.

III. Conclusion

In view of the foregoing, AdHoc urges the Commission to reform the USF contribution assessment methodology pursuant to Appendix B, but with the modified capacity tiers suggested by AT&T being used when telecommunications providers do not provide service with which there are associated telephone numbers. Although intercarrier compensation mechanisms need to be rationalized, Appendices A and C do not provide a sound basis for reform. Revenue neutrality pervades both Appendices, but neither Appendix justifies revenue neutrality. There is no basis for a conclusion that

[21] Qwest, comments at 5.
[22] AT&T, comments at 39 – 41.

access changes predicted on revenue neutrality with no regard for the carriers' earnings from regulated, interstate services would be just and reasonable.

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Certificate of Service

I, Dorothy Nederman, hereby certify that true and correct copies of the preceding Reply Comments of AdHoc Telecommunications Users Committee were filed this 22nd day of December, 2008 via the FCC's ECFS system and by email to:

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